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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,332	11/16/2000	Karen Ann Sheppard	10236	4336

7590 08/09/2002

ExxonMobil Chemical Company
Law Technology
PO Box 2149
Baytown, TX 77522-2149

[REDACTED] EXAMINER

AHMED, SHEEBA

ART UNIT	PAPER NUMBER
1773	5

DATE MAILED: 08/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/714,332	SHEPPARD ET AL.	
	Examiner	Art Unit	
	Sheeba Ahmed	1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 1-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Cretekos et al. (US 6,074,762).

Cretekos et al. disclose a multilayer film having a core layer, a block resistant layer (***corresponding to the heat sealable layer of the claimed invention***) which inhibits blocking to a functional layer of the film, which is printable or sealable (Column 1, lines 4-8). The core comprises a thermoplastic and has a first side and a second side, the functional layer is on the first side of the core layer and the block resistant layer is on the second side of the core layer (Column 2, lines 1-10). The core layer comprises a propylene homopolymer (***thus meeting the limitations of claim 2***)

(Column 3, lines 23-30). The block resistant layer comprises a copolymer of ethylene and propylene (Column 3, lines 44-50). The functional layer may comprise an ethylene-propylene-butylene terpolymer (***thus meeting the limitations of claim 9***) (Column 3, lines 51-55). The block resistant layer is compounded with 0.05 to 10 weight percent of a particular kind of polydialkylsiloxane known as silicone gum (***thus meeting the silicone gum weight percent limitations of claim 5***) which has a viscosity of 10 to 20 million cSt (***thus meeting the limitations of claim 4***) (Column 3, lines 66-67 and Column 4, lines 20-25, 52-54 and 67). The properties of the film may be enhanced by adding antiblock additives in an amount ranging from 0.1 to 3 weight % (***thus meeting the antiblocking agent weight percent limitations of claim 5***) and examples include spherical particles made from methyl methacrylate resin having an average particle diameter of 1 to 15 microns (***thus meeting the limitations of claim 3***) (Column 5, lines 32-60). Each layer may, optionally, comprise antistatic additives or antiblock additives (***thus meeting the limitations of claims 6, 7, and 11***) (Column 5, lines 39-42). The multilayer film is typically made by coextruding the core layer together with the block inhibiting layer and the functional layer (Column 6, lines 32-35). Optionally, one or both of the external surfaces maybe flame or corona treated (Column 6, lines 40-45). Examples 1 and 2 show that the functional layer may be treated while the antiblock layer is left untreated (***thus meeting the limitations of claim 8***) and that the core layer may have a thickness of 18.8 microns and the block inhibiting layer and the functional layer may have thickness' of 0.6 microns (***thus meeting the limitations of claim 10***). The film comprises at least three layers and additional layers may be incorporated (***thus***

meeting the limitations of claims 12 and 13). The Examiner takes the position that the block resistant layer disclosed by Cretekos et al. is inherently heat sealable given that the chemical composition of the block resistant layer as disclosed by Cretekos et al. and the heat sealable layer of the claimed invention is identical. All limitations of the claimed invention are disclosed in the above reference.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-5 and 9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 8, and 11 of U.S. Patent No. 6,074,762 in view of Schuhmann et al. (US 5,851,640).

Claims 1-6, 8, and 11 of U.S. Patent 6,074,762 recite a film structure comprising a core layer of a propylene polymer having a first side and a second side, a functional layer of a propylene or ethylene polymer or copolymer on the first side of the core and which is printable or sealable and a block resistant layer comprising a propylene or

ethylene polymer and 0.1 to 1 weight percent of a polydialkylsiloxane having a molecular weight greater than about 200,000 and a viscosity above 10 million centistokes wherein the amount is sufficient to inhibit blocking. Claims 1-6, 8, and 11 of U.S. Patent 6,074,762 fail to recite that the block resistant layer comprises 0.05 to about 0.5 weight percent of a particulate antiblocking agent having an average particle size f from about 1 to about 5 microns. However, Schuhmann et al. disclose a sealable, multiplayer polypropylene film having a printable surface and comprising a core layer and top layers on either side of the core layer (Column 1, lines 9-14). The multiplayer film has outstanding gloss and good sealing properties (Column 2, lines 5-6). The top layers may comprises 0.1 to 2-weight % of silicon dioxide having an average particle diameter of 1 to 6 microns as an antiblocking agent (Column 8, lines 62-68 and Column 9, lines 1-4). Accordingly, it would have been obvious to one having ordinary skill in the art to add 0.1 to 2-weight % of silicon dioxide having an average particle diameter of 1 to 6 microns as an antiblocking agent to the block resistant layer recited in claims 1-6, 8, and 11 of U.S. Patent 6,074,762 given that Schuhmann et al. specifically state that doing so improves the antiblocking properties of the outer layers while maintaining outstanding gloss and sealing properties.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (703)305-0594. The examiner can normally be reached on Mon-Fri 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on (703)308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-5408 for regular communications and (703)305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-5665.


Sheeba Ahmed
July 30, 2002


Vivian Chen
Primary Examiner